

ASSEMBLY BILL

No. 1407

Introduced by Assembly Member Oropeza

February 22, 2005

An act to add Division 29 (commencing with Section 38000) to the Public Resources Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1407, as introduced, Oropeza. California Environmental Health and Air Quality Funding Act of 2005.

Under the Diesel Fuel Tax Law, a tax is imposed on the removal of diesel fuel from various storages, as specified.

This bill would enact the California Environmental Health and Air Quality Funding Act of 2005. The act would require a supplier of dyed diesel fuel to pay an air quality fee in an unspecified amount per gallon for the removal or sale of dyed diesel fuel or blended dyed diesel fuel, as specified. The act would also require an ultimate vendor to pay an air quality fee in an unspecified amount per gallon on each gallon of undyed diesel fuel sold by the ultimate vendor to a farmer in a specified transaction. The act would require a user of undyed diesel fuel to pay an air quality fee in an unspecified amount per gallon on each gallon of undyed diesel fuel for which the user claims a refund of the diesel fuel tax, as specified. The bill would require the State Board of Equalization to administer the fees imposed.

The bill would establish the California Environmental Health and Air Quality Fund in the State Treasury. The bill would require the fees imposed on dyed diesel fuel and undyed diesel fuel pursuant to the bill's provisions be deposited in the fund. Moneys in the fund may be expended, upon appropriation by the Legislature, for refunds, for the

administrative costs of the State Board of Equalization, and the balance for unspecified purposes.

The bill would provide that provisions of the act become operative on July 1, 2006.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Division 29 (commencing with Section 38000)
2 is added to the Public Resources Code, to read:

3
4 DIVISION 29. THE CALIFORNIA ENVIRONMENTAL
5 HEALTH AND AIR QUALITY FUNDING ACT OF 2005

6
7 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

8
9 38000. This division shall be known, and may be cited, as the
10 California Environmental Health and Air Quality Funding Act of
11 2005.

12 38001. For purposes of this division, the following terms
13 apply:

14 (a) "Air quality fee" means the fee imposed pursuant to
15 Section 38022, 38023, or 38024.

16 (b) "Blended dyed diesel fuel" means a mixture of dyed diesel
17 fuel with respect to which an air quality fee has been imposed
18 and any other liquid on which an air quality fee has not been
19 imposed. Blended dyed diesel fuel also means a conversion of a
20 liquid into dyed diesel fuel. Conversion of a liquid into dyed
21 diesel fuel occurs when a liquid that is not included in the
22 definition of dyed diesel fuel and that is outside the bulk
23 transfer/terminal system is sold as dyed diesel fuel, delivered as
24 dyed diesel fuel, or represented to be dyed diesel fuel.

25 (c) "Entry" means the importing of dyed diesel fuel into this
26 state. Dyed diesel fuel brought into this state in the fuel tank of a
27 motor vehicle shall not be deemed to be an entry.

28 (d) "Farmer" means a person who uses undyed diesel fuel on a
29 farm for farming purposes and has given his or her supplier a
30 certificate described in Section 60503 of the Revenue and

1 Taxation Code to purchase the undyed diesel fuel without the
2 diesel fuel tax.

3 (e) “Fund” means the California Environmental Health and
4 Air Quality Fund established pursuant to Section 38020.

5 (f) “Supplier” includes a person who does all of the following:

6 (1) Holds the inventory position in the diesel fuel, as reflected
7 on the records of the terminal operator. A person holds the
8 inventory position in diesel fuel when that person has a
9 contractual agreement with the terminal operator for the use of
10 storage facilities and terminaling services at a terminal with
11 respect to the diesel fuel.

12 (2) Owns, operates, or otherwise controls a refinery used to
13 produce diesel fuel from crude oil, unfinished oils, natural gas
14 liquids, or other hydrocarbons, and from which diesel fuel may
15 be removed by pipeline, by vessel, or at a rack.

16 (3) Enters or imports dyed diesel fuel into this state.

17 (4) Produces dyed diesel fuel by adding dye to diesel fuel at
18 the rack or in the terminal yard or refinery yard in connection
19 with the sale and delivery of the dyed diesel fuel.

20 (5) Produces or converts blended dyed diesel fuel outside the
21 bulk transfer/terminal system.

22 38002. For the purposes of this division, the terms “bulk
23 transfer,” “bulk transfer/terminal system,” “carrier,” “diesel
24 fuel,” “dyed diesel fuel,” “forwarding agent,” “gallon,”
25 “highway,” “in this state,” “motor vehicle,” “rack,” “refinery,”
26 “removal,” “sale,” “terminal” and “terminal operator,” “ultimate
27 vendor,” and “undyed diesel fuel” are defined pursuant to Part 31
28 (commencing with Section 60001) of Division 2 of the Revenue
29 and Taxation Code.

30
31 CHAPTER 2. THE CALIFORNIA ENVIRONMENTAL HEALTH AND
32 AIR QUALITY FUND

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34 38020. The California Environmental Health and Air Quality
35 Fund is hereby created in the State Treasury. The money in the
36 fund shall be expended for purposes of this division, upon
37 appropriation by the Legislature for that purpose.

38 38022. The supplier of dyed diesel fuel in each of the
39 following activities shall pay an air quality fee in the amount of
40 ___ cents (\$____) per gallon:

1 (a) The removal or sale of dyed diesel fuel in this state from a
2 terminal rack.

3 (b) The removal or sale of dyed diesel fuel in this state from a
4 refinery rack.

5 (c) The entry of dyed diesel fuel into this state for sale,
6 consumption, use, or warehousing, if the entry is not by bulk
7 transfer.

8 (d) The removal or sale of blended dyed diesel fuel in this
9 state by the blender of that blended dyed diesel fuel. The number
10 of gallons of blended dyed diesel fuel subject to the air quality
11 fee is the difference between the total number of gallons of
12 blended dyed diesel fuel removed or sold and the number of
13 gallons of diesel fuel used to produce the blended dyed diesel
14 fuel on which the air quality fee was previously paid.

15 38023. An ultimate vendor shall pay an air quality fee of ____
16 cents (\$____) per gallon on each gallon of undyed diesel fuel
17 sold by the ultimate vendor to a farmer in a transaction in which
18 the ultimate vendor is eligible for a refund of diesel fuel tax
19 under Section 60502 of the Revenue and Taxation Code or a
20 credit of diesel fuel tax under Section 60508.2 of the Revenue
21 and Taxation Code.

22 38024. A user of undyed diesel fuel shall pay an air quality
23 fee of ____ cents (\$____) per gallon on each gallon of undyed
24 diesel fuel for which the user claims a refund of the diesel fuel
25 tax under subparagraph (A), (C), (D), or (E) of paragraph (4) of
26 subdivision (a) of Section 60501 of the Revenue and Taxation
27 Code. The State Board of Equalization shall collect the amount
28 owing under this section by offsetting the amount of the fee
29 against any refund of diesel fuel tax allowed under subparagraph
30 (A), (C), (D), or (E) of paragraph (4) of subdivision (a) of
31 Section 60501 of the Revenue and Taxation Code.

32 38030. The fee imposed pursuant to Sections 38022 does not
33 apply to dyed diesel fuel that is required to be shipped and is
34 shipped to a point outside of this state by a supplier pursuant to
35 the contract of sale by either of the following means:

36 (a) Facilities operated by the supplier.

37 (b) Delivery by the supplier to a carrier, customs broker, or
38 forwarding agent, whether hired by the purchaser or not, for
39 shipment to the out-of-state point.

1 38033. (a) Persons who have paid the fee on dyed diesel fuel
2 pursuant to Section 38022 that is subsequently exported for use
3 outside of this state shall be reimbursed and repaid the amount of
4 the fee. The person may file a claim for refund with the State
5 Board of Equalization. Dyed diesel fuel that is carried from this
6 state in the fuel tank of a motor vehicle is not deemed to be
7 exported from this state.

8 (b) The claim for refund shall be filed within three years from
9 the date of purchase of the dyed diesel fuel. Each claim for
10 refund shall be made on a form prescribed by the State Board of
11 Equalization and contain a statement that the claimant has proof
12 of exportation. The claimant shall retain and provide upon
13 request copies of documents supporting the export.

14 (c) In lieu of the refund of the fee on dyed diesel fuel exported
15 by the supplier or ultimate vendor for use outside the state in the
16 manner as would entitle a supplier or ultimate vendor to claim a
17 refund under subdivision (a), credit may be given the supplier
18 upon the supplier's fee return and the ultimate vendor upon the
19 ultimate vendor's fee return.

20 38035. The State Board of Equalization shall administer the
21 fees imposed pursuant to Sections 38022, 38023, and 38024 in
22 accordance with the Fee Collection Procedures Law (Part 30
23 (commencing with Section 55001) of Division 2 of the Revenue
24 and Taxation Code).

25 38036. The fees imposed pursuant to Sections 38022, 38023,
26 and 38024 are due and payable to the State Board of Equalization
27 quarterly on or before the last day of the calendar month
28 following the close of the quarterly period to which it relates. A
29 return for the preceding quarterly period, in the form prescribed
30 by the State Board of Equalization, shall be filed with the
31 payment of the fee.

32 38037. All fees imposed pursuant to Sections 38022, 38023,
33 and 38024 shall be paid in the form of remittances payable to the
34 State Board of Equalization. The State Board of Equalization
35 shall deposit in the fund all amounts collected. All interest earned
36 on the moneys deposited in the fund shall be deposited in the
37 fund.

38 38040. The money deposited to the credit of the fund may be
39 expended for the following purposes:

- 1 (a) To pay, upon order of the State Controller, for refunds
2 pursuant to Section 38033 and the Fee Collection Procedures
3 Law (Part 30 (commencing with Section 55001) of Division 2 of
4 the Revenue and Taxation Code).
- 5 (b) To pay for the administrative costs of the State Board of
6 Equalization of collection, auditing, and making refunds
7 associated with the fund.
- 8 (c) The balance shall be expended for ____.
- 9 SEC. 2. The provisions of this act shall become operative on
10 July 1, 2006.